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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,912	06/08/2001	Ronald Magee	5028B	1113

7590

03/28/2003

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,912

Applicant(s)

MAGEE ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 & 6. 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification lacks support for the “bundled” limitation of claim 14 .

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 1, 5-7, 11-13, and 16, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Similarly, the phrase "or the like" renders the claims indefinite because the claims include elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d). Claims 2-4, 8-10, 14, and 15 are rejected for their dependency upon claims 1, 7, and 13.

5. Claims 1, 6, 7, 12, and 13 are indefinite for the use of the phrase “all white (no dye applied).” It is unclear if Applicant intends to the scope of the claim to “all white,” “no dye

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applied,” or both, since the two are not necessarily equivalent descriptions. Claims 2-5, 8-11, and 14-16 are rejected for their dependency upon claims 1, 6, 7, 12, and 13.

6. Claims 7, 11, and 12 are indefinite for the use of the term “sisal-like.” The use of “-like” renders the scope of the claims unclear. Additionally, it is unclear how the flooring is intended to be “sisal-like.” Is it “sisal-like” in surface texture, structure, color, durability, price, etc.?

Due to the indefiniteness of this phrase, the limitation is not given weight at this time.

7. Claim 13 is indefinite for the use of the phrase “woven looking flooring.” It is unclear what Applicant intends to encompass by said phrase. Is the flooring “woven looking” in surface texture, structure, color, etc.? Due to the indefiniteness of this phrase, the limitation is not given weight at this time.

8. Claim 14 is indefinite for the use of the term “bundled” carpet. It is unclear what Applicant intends to encompass by this term since it is not a common term in the art.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1, 2, 5-8, 11-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Shoshkes, *Contract Carpeting*, pages 32-46.

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Shoshkes teaches the various known processes for coloring carpet substrates include dying the fibers before spinning (i.e., stock or solution dyeing), dyeing after spinning (i.e., skein, package, or space dyeing), and dyeing or printing after weaving (i.e., piece dyeing, including cross-dyeing, and carpet printing)(page 32). When fibers are dyed before or after spinning, Applicant's limitation of a carpet substrate having yarns which are "pre-dyed with a single color" is inherently met. When fibers are spaced dyed after spinning, the limitation of "pre-dyed with multiple colors" is inherently met. When a yarn is not dyed before weaving into a carpet, the yarn is inherently either "naturally colored" or with "no dye applied." Once woven, the undyed yarns may be dyed by a method of piece dyeing and/or cross-dyeing (i.e., chemically treated to absorb dyes differently) (page 32) or may be printed with a pattern or design (page 39). Figure 15 shows a newly dyed carpet being spattered with additional colors for a random dot effect (page 34). The dyed or printed carpet is inherently cut and/or formed into a finished product for commercial sale (i.e., broadloom carpet, carpet tile, area rugs, etc). Conventional carpet constructions include tufted carpets and woven carpets (pages 40-46). Thus, it can be seen that claims 1, 2, 5-8, 11-14, and 16 are clearly anticipated by the cited Shoshkes reference.

11. Claims 12-14 and 16 are rejected under 35 USC 102(b) as being anticipated by US 4,188,216 issued to Blumenhaus.

Blumenhaus discloses a method of print dyeing pile carpet fabrics (col. 1, lines 10-21). Blumenhaus teaches coloring of tufted carpet includes printing a pattern on a greige background (i.e., undyed, natural, or white tufted yarns) or on a single pre-dyed background color (col. 1, lines 23-25). As noted above, tufted carpet is inherently cut and/or formed into a finished product for commercial sale (i.e., broadloom carpet, carpet tile, area rugs, etc). Thus, Blumenhaus

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anticipates Applicant's claims 12-14 and 16.

12. Claims 12-14 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2002/0034607 issued to Stoyles.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Stoyles teaches a method of printing designs or patterns on carpet substrates (abstract). The carpet may be either a tufted or fusion bonded carpet ([0064]). The carpet substrates are printed or dyed and then cut and formed into finished products or the substrate may first be cut and then dyed and printed ([0055] and [0057]).

Although Stoyles is silent with respect to the carpet substrate comprising 'a yarn which is at least one of all white or undyed, pre-dyed with a single color, pre-dyed with multiple colors, naturally colored, or chemically treated to differentially absorb dye,' it is asserted that the Stoyles disclosure inherently encompasses this claim limitation. In particular, said claim limitation is so broad that it encompasses all greige goods carpet substrates (i.e., a carpet substrate right off the tufting or fusion bonding machine before any conventional finishing process occur). Thus, the Stoyles teaching of dyeing or printing carpet substrates and then cutting and forming said substrates into finished products inherently teaches a greige carpet substrate as the starting product. Therefore, claims 12-14 and 16 are clearly anticipated by the

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Stoyles publication.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Blumenau reference in view of the cited Shoshkes reference.

Blumenaus is silent with respect to woven carpet substrates. However, Shoshkes clearly teaches woven carpet substrates. Thus, it would have been obvious to one skilled in the art to employ the Blumenau invention on not only tufted carpets, but woven pile carpets in order to expand the number of applications of said invention and in order to produce less expensive woven carpets (i.e., by printing on a design rather than weaving said design into the carpet substrate). Therefore, claims 1, 2, 5-8, and 11 are rejected as being obvious over the cited prior art.

With respect to claims 3, 4, 9, 10, and 15, it is noted that Blumenau teaches the desire to achieve fine detail in the carpet print patterns (col. 1, lines 40-42). Blumenau also teaches conventional carpet printing screens have mesh sizes of 60-74 openings per inch (dpi) (col. 1, lines 42-44). Shoshkes teaches conventional tufted carpets have 4-12 needles per inch and 5-10 stitches per inch, with heavy grade tufted carpets have over 64 tufts per square inch (dpi) (page 27). Hence, for example, a 7 x 7 carpet would have 49 dpi, which is less than the standard dpi of

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the print pattern. It is argued that selection of a design dpi with respect to the dpi of a carpet would require only routine skill in the art as said selection would be based upon a balance of carpet density vs. pattern density, or the overall desired carpet quality. Thus, it would have been obvious to one skilled in the art to select a print pattern dpi which is higher than the carpet dpi since Blumenau teaches that it is desirable to produce a fine, detailed pattern. Therefore, claims 3, 4, 9, 10, and 15 are rejected as being obvious over the cited prior art.

15. Claims 3, 4, 9, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Shoshkes reference in view of the cited Blumenau patent.

Although Shoshkes does not teach the dpi of the applied design and the carpet, it is argued that selection of a design dpi with respect to the dpi of a carpet would require only routine skill in the art as said selection would be based upon a balance of carpet density vs. pattern density, or the overall desired carpet quality. Thus, it would have been obvious to one skilled in the art to select a print pattern dpi which is higher than the carpet dpi since Blumenau teaches that it is desirable to produce a fine, detailed pattern. Therefore, claims 3, 4, 9, 10, and 15 are rejected as being obvious over the cited prior art.

Conclusion


16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

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March 21, 2003